

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

9	ESMID REYES RAMIREZ,	)	No. CV-F-04-6298 OWW
10		)	(No. CR-F-03-5010 OWW
11)	
12	Petitioner,	)	MEMORANDUM DECISION AND
13		)	ORDER DENYING PETITIONER'S
14	vs.	)	MOTION TO VACATE, SET ASIDE
15		)	OR CORRECT SENTENCE PURSUANT
16	UNITED STATES OF AMERICA,	)	TO 28 U.S.C. § 2255 AND
		)	DIRECTING CLERK OF COURT TO
		)	ENTER JUDGMENT FOR
	Respondent.	)	RESPONDENT
)	

On September 22, 2004, Petitioner Esmid Reyes Ramirez timely filed a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255.

Petitioner's motion is DENIED. Petitioner's motion is based on the retroactive application of *United States v. Booker*, 543 U.S. 200 (2005) and *Blakely v. Washington*, 542 U.S. 296 (2004). Petitioner is not entitled to relief on this ground. *Booker* and *Blakely* are not retroactive on collateral review. *United States v. Cruz*, 423 F.3d 1119 (9th Cir.2005), cert.

denied, 546 U.S. 1155 (2006); *Schardt v. Payne*, 414 F.3d 1025 (9th Cir.2005).¹

For the reasons stated:

1. Petitioner's motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 is DENIED;

2. The Clerk of the Court is directed to enter Judgment for Respondent.

IT IS SO ORDERED.

Dated: May 22, 2008

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

¹This conclusion makes unnecessary any discussion of the validity of Petitioner's waiver in the written Plea Agreement of the right to bring a Section 2255 motion.